O/BCRO/48

1948

File No. G/A-44/48

Legal Department

G **BRANCH**

Subject:—

Opinion Under the Bombay Cloth Rationing Order, 1945

1948

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O/B.C.R.O/48

File No. G/A-44/48(43/48)

Gen. 194 e.

C O N T E N T S.

Legal Department File No. C/ B C R O / 48.

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		Opinions under the Bombay Cloth Rationing order, 1946.	
1)	1622 16-2-48.	Clauses 5 and 7 Disposal of surplus cloth by the xxGovt. of India under the cloth disposal schem .- Whether action is feasible under the order against M/ Hardas Khim & Co. other merchants. (copies not made).	1-2.
2)	1576 15-2-48.	Clause 5 and 7 Bombay Cotton Cloth Trade Regulation order, clause 19. Whether any action is feasible against the four dealers who purchased cloth from Shri Shantilal Shah and sold xxxxx it in Bombay not being F.C.D's Whether prosecution would be feasible against Shri Shantilal Shah for selling printed chit at Bombay & Ahmedabad without obtaining release order from A.C.C.	3-4.
3)	C/135 14-4-48.	.....Do..... ..Do..... (copies not made).	5-8.
4)	C/1623 16-2-48.	Clauses 5 and 7.- Whether action can be taken against the merchants who sold the cloth purchased from. Disposal Unit. (Copies not made).	9-10.
5)	C/569 4-9-48.	Clause 5.- Bombay Cotton Cloth Trade Regulation Order cl. 17 . Whether any action is feasible against M/s Khetuni Textile Industries and three other companies for non-declaration of stocks and for selling rationed cloth without being F.C.D.'s.	11-12.

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Office of the P.I.A.

Under clause 19 of the B.C.C.T.P.C. it is obligatory on a dealer (i) to issue a correct cash memo containing the details specified in the said clause (ii) to produce it for inspection on demand by the licensing authority or any officer authorised by it in this behalf and (iii) to preserve it for one year from the date of issue. In this case all the four dealers cannot produce the cash memos as they say that there were no markings on the cloth. Two of them say that the cloth had a mark showing that it was handloom cloth. As the cloth was sold in retail the dealers naturally cannot lay their hands on particular cash memos and say that these are the ones issue in respect of cloth obtained by them from M/s Chantilal Kulchand. In the absence of cash memos it will not be possible to establish that they did not contain the prescribed details. They could not also be produced. Even, if cash memos were not issued, in the absence of any other evidence to prove this except the admission of the dealers, prosecution will not be feasible.

The dealers can be prosecuted under clause 5 of the B.C.P.C. or in the alternative clause 7 of the B.C.P.C. Though there is no evidence excepting their own admissions to prove that they have sold the cloth in Bombay not being T.C.L. , they cannot contend that they mused the cloth because obtaining for use is an offence under clause 7. Before however, prosecuting them further evidencexxx regarding the fact that the cloth is not with them may have to be obtained.

Sd/- 13/2

Remembrancer of Legal Affairs.

U.P. to C.S.D. No. 1576 dated 13-2-48.

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Office of the R.L.A.

According to the Textile Commissioner's letter at page 31 ante, it appears that M/s Khetani Textile Industries Ltd., were allowed to retain about 400,000 yards of material on the company depositing in the Reserve Bank of India, Bombay, a sum of Rs. 3,12,339-9-2 representing the price of the said material at the rate of Rs.0-10-3 pa. per yard. The company on depositing the said amount was allowed to dispose of the material into the Civil market under the Company's own arrangements. By this second letter dated the 30th March 1946, the said company , on payment of Rs. 2,36,459/- was permitted to dispose of the material rendered surplus tothe Government's requirements against the order referred to in the letter into the Civil market under the Company's own arrangements. Thus reading these letters with reference to the contracts which the company had entered into with the Government, it appears that Government allowed the Company, on payment of the price of the material entrusted to the Company, to retain the material and dispose of it under their own arragements. This only shows that Government thereby passed over the ownership of the materials to the Company and nothing else. It does not imply that thereby the Textile Commissioner exempted the Company from the provisions of law, imposing controls on the material in question. Moreover, such implication will have no legal sanction as the Textile Commissioner was obviously incompetent to exempt the company from the provisions of the Bombay Raw Cotton Cloth Trade Regulation Order, 1945 and the Bombay Cloth Rationing Order, 1945, both of which were issued by the Government of Bombay. The said Company would therefore be liable for contravention of the Cloth Provisions of clause 17 of the Bombay Cotton Trade

Regulations Order, 1945 and clause 5 of Bombay Cloth Rationing Order, 1945.

The three companies which purchased the cloth from M/s Bhotani Textile Industries Ltd. would no doubt be liable for contravening the provisions of clause 17 of the Bombay Cotton Cloth Trade Regulation Order, 1945 and clause 5 of Bombay Cloth Rationing Order, 1945.

The view expressed by the Police Prosecutor in this behalf does not appear to be correct.

Sd/-

Remembrancer of Legal Affairs.

U.O.F. to C.S.L. No. G/569, dated 4/9/48.

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16/7
4c.